FRONT Report LINE

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Attorney General Jay Nixon (seated left) teamed with Fred Goldman to campaign for more rights for crime victims. Joining them at a news conference were Rep. Kelly Parker (standing), who sponsored legislation, and Marilyn Bassett and her son John. Bassett's husband, Maries County Sheriff Roy Bassett, was murdered in 1994 while working a traffic accident. Sen. Ed Quick also is sponsoring victims' rights legislation.

Nixon campaigns for crime victims

More judicial rights sought

FRED GOLDMAN, father of murder victim Ron Goldman, joined AG **Jay Nixon** at news conferences in support of more rights for crime victims in recognition of National Crime Victims' Rights Week in April.

Goldman has become a strong advocate for crime victims since his son was killed in 1994 along with Nicole Brown Simpson.

Nixon has aggressively sought more rights for victims. He has a proposal before state legislators that would allow victim-witnesses to be in the courtroom during the entire trial.

Now, victims who are witnesses are not allowed to hear testimony of other witnesses. The legislation is expected to pass.

THE AG's OFFICE has a new publication available that can help law enforcement officials convey information to victims of domestic abuse.

Among topics in Protecting Victims of Domestic Violence:

- What protective orders are
- How to obtain the orders
- Shelter sites for victims

To obtain copies, call 573-751-8844.

Police can order passengers out of vehicles

THE U.S. SUPREME COURT has ruled that police can order passengers to get out of vehicles during traffic stops.

In *Maryland v. Wilson,* No. 95-1268, WL 65726 (Feb. 19), the justices said the need to protect police officers' safety justifies the "minimal" intrusion on a passenger's rights.

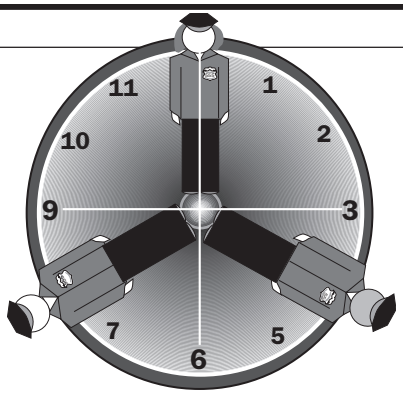
The 7-2 ruling reversed a Maryland appeals court decision that said crack cocaine found during a 1994 traffic stop could not be used as evidence because the officer did not have the right to order a passenger out of a car.

A Maryland state trooper had stopped a speeding car and noticed it had no license tag. While talking to the driver, the trooper noticed a passenger who seemed nervous. After ordering the passenger out of the car, crack cocaine fell to the ground and he was arrested.

This ruling does not automatically authorize officers to search a driver or passenger. Officers cannot search unless they have a specific, reasonable suspicion to believe a person is armed.

The passenger sought to have the cocaine suppressed as evidence, saying his Fourth Amendment right to be free from unreasonable searches and seizures was violated.

The 1997 ruling did not address whether officers can require passengers to stay at the scene until the driver is released.



Police officers target of assaults

THERE WERE 2,291 assaults on officers in Missouri in 1995, according to the Highway Patrol. That breaks down to one officer being assaulted about every four hours.

Assault odds: One out of every four officers was the target of assaults in 1995, the most recent reporting year.

Crime time: The majority of assaults occurred between 8 p.m. and 1 a.m., with more officers being assaulted from 10 p.m. to midnight.

Targeted: More than 41 percent of the assaults occurred on lone officers responding to a request for help.

Dangerous calls: Officers were more likely to be assaulted while responding to a disturbance call. About 28 percent of assaults occurred then.

Murdered: From 1986-1995, 30 officers were killed while on duty. Seventeen were killed by felonious acts and 13 in accidents. Of the 17 murders, 15 were killed by guns and the other two were intentionally struck by vehicles.

Non-certified peace officers limited on police powers

CHRIS EGBERT, administrator for the state Peace Officer Standards and Training Program, says the police powers of non-certified peace officers are limited.

Political subdivisions with populations of less than 2,000 or those that employ fewer than four full-time peace officers do not have to comply with certification requirements specified in Section 590.150, RsMo. A small city can hire an individual, give him a gun and badge and call him a peace officer, Egbert says.

NON-CERTIFIED OFFICERS' POWERS

Officers in jurisdictions that have exempted themselves from the certification requirements cannot rely on "probable cause" to make arrests — which severely limits their arrest power.

In third- and fourth-class cities, non-certified officers can arrest without process in all cases in which any offense against the laws of the city or the state was **committed in their presence** (85.561).

Any political subdivision that falls under 544.216 and does not train and certify their officers or is considering not certifying new officers should seek counsel from its prosecutors and legal advisers.

CERTIFIED OFFICERS' POWERS

Any **certified** peace officer may arrest on view and without a warrant any person he sees violating, or who he has reasonable grounds to believe has violated, any law of this state, including a misdemeanor, or has violated any ordinance over which he has jurisdiction.

Certified officers can arrest if they have probable cause to believe a crime was committed. It does not matter if they did not view the crime or if it was a misdemeanor or felony.

STIPULATIONS

Under Section 590.140, these political subdivisions must train and certify officers:

- Those collecting court costs for training peace officers.
- Those with an ordinance requiring officers to be certified.
- Any city within St. Louis, St. Charles and Jackson counties.

PENALTIES

- Any person who purposely violates certification requirements is guilty of a class B misdemeanor (590.180.1).
- If a subdivision employs non-certified officers, it cannot receive state or federal funds designated for training and certifying officers or for other law enforcement, safety or criminal justice purposes (590.180.2).

Front Line Report is published on a periodic basis by the Missouri Attorney General's Office, and is distributed to law enforcement officials throughout the state.

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UPDATE: CASE LAWS

MISSOURI SUPREME COURT

State v. Roy Sutherland
No. 78884
Mo.banc, Feb. 25, 1997

A prison visitor card was admissible in evidence under the Business Records Exception of Section 490.680, RSMo 1994.

A custodian of records for the St. Louis County jail testified on the identity of the visiting card, and explained how the card was prepared.

The trial court properly found that the sources of the information and the method and time of preparation indicated sufficient reliability to justify admission of the record. There was no "double hearsay" because the underlying statement contained on the card was not hearsay. The information on the prison card was not offered for the truth of the matter asserted.

There was also no violation of the confrontation clause. In *White v. Illinois,* 502 U.S. 346 (1992), the Supreme Court held that if the challenged out-of-court statements were not made during a prior judicial proceeding, the statements must only show "indicia of reliability" to meet the requirements of the confrontation clause.

Here, the challenged out-of-court statement was not made in a judicial proceeding but was made on a prison visitor card. It was unnecessary for the state to produce the declarant at trial or show he was unavailable.

Furthermore, the statement met the "indicia of reliability" prong of *Ohio v. Roberts* because the statement fell within the firmly rooted Business Records Exception.

EASTERN DISTRICT

State v. Stacie White
No. 67593
Mo.App., E.D., Jan. 28, 1997

The trial court did not commit plain error in allowing the prosecutor to comment on the defendant's post-arrest silence in the rebuttal portion of the closing argument.

Throughout the case, the defendant's attorney "opened the door" by creating the impression that the defendant generally cooperated with police.

Although the state may not use the defendant's post-arrest silence as substantive evidence of the defendant's guilt, the defendant's silence may be used "to challenge the defendant's testimony as to his behavior following arrest." See *Doyle v. Ohio*.

State v. Cedric Conley
No. 69457
Mo.App., E.D., Jan. 28, 1997

In this retrial of the defendant for multiple sexual offenses involving children, the court erred in admitting evidence of uncharged conduct in a confession. The testimony was not admissible under Section 566.025, RSMo 1994, since some of the victims were 14 when the sexual abuse occurred.

The evidence was also not admissible to prove a complete and coherent picture of the crimes charged. The evidence of sexual misconduct of the victim was not part of the *res gestae* of the crimes for which the defendant was charged.

State v. Ocelia Blackmon
No. 65528
Mo.App., E.D., March 11, 1997

This case originally was transferred to the Missouri Supreme Court, which ordered the case retransferred to the Court of Appeals. The appellate court reissued its earlier opinion, holding that in a prosecution for PCP trafficking, the trial court erred in admitting evidence of the defendant's prior convictions of possession and trafficking of PCP.

The state presented no evidence to show that the PCP previously possessed by the defendant looked like the PCP found in her attic in this case. Evidence of the prior convictions, without more, did nothing to prove the defendant would have recognized PCP.

The prior convictions were not needed to prove the defendant's knowledge since the state presented circumstantial evidence that the defendant knew PCP was in her house. Thus, while the defendant's prior convictions added little probative value, the prejudicial effect of the evidence was strong.

Mugs still wanted for Internet site

LAW ENFORCEMENT officials are encouraged to send pictures and descriptions of their most wanted felons to include on the AGO's Internet home page: **http://www.state.mo.us**

The site carries mugshots and descriptions of fugitives wanted by agencies on charges such as rape, robbery and stealing. The felons also will be featured on the Attorney General's monthly cable television program. Send your mugshots to: Front Line, Attorney General's Office, PO Box 899, Jefferson City, MO 65102.

UPDATE: CASE LAWS

EASTERN DISTRICT

State v. Brian Phillips
No. 63423 & 67620
Mo.App., E.D., Feb. 4, 1997

The court reversed the conviction, finding the state improperly impeached the defendant's credibility with uncharged misconduct. At the time of the murder, the defendant was on supervised release from federal imprisonment and had left a halfway house without signing out.

When arrested, the defendant spontaneously stated he was going to turn himself in for escaping custody. The state cross-examined the defendant using the statement to show what the defendant said and to show any culpability regarding the murder charge.

This evidence did not fit within the exceptions of the general rule against evidence of uncharged misconduct.

State v. George Hunter
No. 67127
Mo.App., E.D., Feb. 25, 1997

The defendant was charged with two counts of sodomy and two counts of endangering the welfare of a child. One endangerment count was reversed.

The defendant forced a 6-year-old to drink a small glass of beer and sent her to bed. He then forced a 13-year-old to drink a 40-ounce bottle of malt liquor. He told her that making her drink the beer and watching her vomit would be his Christmas present. He then sodomized the teen-ager.

The court found sufficient evidence to convict him of endangering the welfare of the teen since the alcohol could have created a substantial risk. It also made her more susceptible to molestation.

The court reversed the endangerment count of the younger girl because there was no evidence that forcing a 6-year-old to drink a small glass of liquor created a substantial risk.

State v. William D. Abel
No. 68281
Mo.App., E.D., Feb. 25, 1997

There was sufficient evidence to convict the defendant of felonious restraint, Section 565.120, RSMo 1994.

The defendant entered the victim's car through the passenger door while she was in a parking lot. The defendant, gripping a sharp-bladed object, glared at the victim. He then grabbed and clutched the victim's arm during a short struggle, threatening her with the bladed object. The victim was able to escape.

Examining cases from other jurisdictions similar to the Missouri statute, the court found that the facts supported a finding of substantial interference with the victim's liberty as required by the statute. The brief restraint was not sufficient to remove it from the scope of the felonious restraint statute.

WESTERN DISTRICT

State v. James D. Stillman
No. 50227
Mo.App., W.D., Jan. 21, 1997

Although the defense counsel stated "no objection" when evidence was introduced, the appellate court found that the defense counsel did not waive his objection to evidence on the basis of a Fourth Amendment claim when he made a motion to suppress, and renewed those objections at all pre-trial proceedings. On the merits, the trial court did not err in admitting evidence seized from a search of the defendant and his car.

Police responded to an informant's tip that two men in a car had crack cocaine. After spotting the car, police stopped it and searched the defendant and the car trunk. Generally, a known informant who has previously provided reliable information and who provides information that is immediately verifiable carries enough indicia reliability to justify a forcible stop. Police knew the informant, who had provided numerous tips in the past.

The tip was partially verified by the police when they located the vehicle. While the tip was not entirely verified — the car was not parked where the informant indicated and there were other people in the car — the inconsistencies did not obliterate the value of the tip. Thus, police had probable cause to arrest the defendant.

State v. Marlon Martin
No. 52258
Mo.App., W.D., Feb. 11, 1997

The defendant was found guilty of aggravated stalking under Section 565.225.3, RSMo 1994.

The defendant argued there was insufficient evidence that his conduct caused the victim to experience "substantial emotional distress" as required by the statute. The term "substantial emotional distress" is not defined in Section 565.225. The legislature did not intend to use the definition of "serious emotional injury," defined in Section 556.061(27), as the meaning for "substantial emotional distress" provided in Section 565.225.

The words "substantial emotional distress" have commonly understood meanings that a person of average intelligence can understand. Medical evidence is not needed to prove that the victim suffered "substantial emotional distress."

UPDATE: CASE LAWS

State v. Timothy Jacobs
No. 52004
Mo.App., W.D., Jan. 21, 1997

In a prosecution for kidnapping, the trial court did not abuse its discretion in admitting evidence on prior domestic abuse by the defendant toward the victim. Evidence showed the defendant's attitude toward the victim and his motive to injure her.

State v. Mark Woodworth
No. 51103
Mo.App., W.D., Feb. 25, 1997

There was sufficient evidence to convict the defendant of murder and assault although the key evidence linking the defendant to the crime was the defendant's fingerprint on an ammunition box in a shed at the victim's home.

While the defendant repeatedly told police he could not recall touching or seeing an ammunition box, it was the jury's responsibility to determine whether the fingerprint evidence indicated the defendant touched the box on the night of the shooting.

Also, there was evidence from which the jury could reasonably infer the defendant's father's revolver was used to shoot the victim.

State v. Fred Ray, Jr.
No. 52109
Mo.App., W.D., March 11, 1997

In a prosecution for second-degree murder, the court erred in excluding evidence that the victim lived in a "drug house" and that the defendant carried a gun to the house because he feared the individuals inside. The evidence was relevant to the defendant's claim of accident and was relevant to show whether the defendant had the requisite intent to commit second-degree murder.

No overtime pay for St. Louis officers

THE U.S. SUPREME COURT ruled in February that sergeants and lieutenants in the St. Louis Police Department are not entitled to time-and-one-half pay for overtime.

The court said the federal Fair Labor Standards Act exempts the officers as white-collar employees.

Lower courts already had ruled that way, but nearly 300 St. Louis officers had argued they should not be exempt because one sergeant was suspended for two days without pay.

The court rejected their argument that the possibility of suspension without pay moves them out of the exempt category.

State v. Friend
No. 51797
Mo.App., W.D., March 18, 1997

The court reversed the defendant's conviction of class B misdemeanor of DWI. The defendant, stopped for driving on the wrong side of an on-ramp, exhibited bizarre behavior.

His blood tested negative for alcohol but positive for methamphetamine. No evidence was presented connecting the defendant's behavior with the meth. There was no evidence to show that his abnormal behavior was consistent with identifiable symptoms of ingested meth that would impair his ability to drive.

Donald Marsh v. State
No. 51829
Mo.App., W.D., Feb. 25, 1997

The appellant appealed the denial of his application for a conditional release from Fulton State Hospital under Section 552.040. The circuit court concluded the appellant was not mentally ill, but denied his application based on the lack of clear and convincing evidence that, if released, he would not endanger others.

The court erred in its factual finding because due process forbids continued confinement of an individual acquitted by reason of mental disease or defect after the individual no longer suffers from the disease or defect. An acquittal based on mental illness carries with it an inference of continuing mental disease or defect. Similarly, Section 552.040 "impliedly recognizes that a person seeking conditional release is still suffering from a mental disease or defect." The appellate court affirmed the denial of release, ruling that the circuit court erred in finding the appellant not mentally ill. It is the movant's burden to prove he no longer was suffering from a mental disease or defect.

SOUTHERN DISTRICT

State v. Mark K. Butts
No. 18389
Mo.App., S.D., Jan. 21, 1997

In this forcible rape case, the trial court did not err in excluding evidence that the victim was forcibly raped by her father some 38 years ago and that her post-traumatic stress disorder was caused by those acts.

At trial, the defendant presented all of the evidence regarding the victim's psychological history and difficulties but did not admit evidence of the prior rape. Nothing in the defendant's rejected offer of proof suggested the victim ever had a dissociative or hallucinative episode as a result of a consensual act of sexual intercourse. The trial court could properly have concluded that the testimony regarding the incestuous rape would be irrelevant.

Elizabeth Ziegler, executive director of the Missouri Office of Prosecution Services, prepares the Case Law summaries for Front Line.

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Missouri leads region in meth lab seizures

Source: U.S. Drug Enforcement Administration

IN FISCAL 1996, law enforcement officials seized 250 meth labs in Missouri, topping all states in the region for number of seizures, says Lt. **John Elliott** of the Highway Patrol's Division of Drug and Crime Control.

Most of the meth lab busts have been concentrated in the Bootheel and Kansas City areas, Elliott says. However, production is now expanding to all areas.

"It's more than just a drug problem," he says.

It has become a major environmental concern. In the last fiscal year, the U.S. Drug Enforcement Administration spent $1 million to clean up hazardous wastes from Missouri's seized labs. That was one-third of DEA's clean-up budget, Elliott says.

Officers who suspect a meth lab, should call the closest Highway Patrol troop headquarters or the DEA. The AG's Office will assist in prosecutions.

While traditional methods of using informants and undercover work have been effective in locating labs, Attorney General **Jay Nixon** says local merchants also can be a good source of information.

"Ask local retailers to contact you if anyone buys large quantities of chemicals used for meth production," Nixon says. "No one needs a case of ephedrine or iodine, alcohol or ether."